IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1395 of 2007

Siva .. Petitioner

Vs.

1. The State of Tamilnadu
rep. by its Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-9.

2. The Commissioner of Police
Greater Chennai
Egmore, Chennai-8. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.M.Rajavelu
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the petitioner/detenu, as the said authority arrived at the subjective satisfaction that the detenu - Siva, son of Nithyanandam is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

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2. Challenging the abovesaid detention, the detenu himself has preferred this Habeas Corpus Petition seeking a writ of habeas corpus to call for the records leading to the detention of the detenu, detained at Central Prison, Chennai by the second respondent vide his order in Memo No.305/BDFGISSV/2007, dated 11.7.2007, to quash the same as illegal and to consequently direct the respondents to produce him before this Court and to set him at liberty.

3.1. The order of detention dated 11.7.2007 was passed on the basis of ground case in Crime No.347 of 2007 for alleged commission of offences under Sections 341, 336, 427, 397, 506(2) IPC. The allegation against the detenu was that on 10.6.2007 at 11.00 hours, when one Solomon Raj (complainant) was attending to his business of mobile canteen, the detenu and his associates had tiffin and when the complainant demanded cost of the same, the detenu and his associates threatened him. Two of the accused took out their knives threatened the complainant and took away Rs.680/- kept in the cash box. The detenu took out aruval, held the same over complainant's neck and took away Rs.250/- from his shirt pocket. The public and servants working under the complainant heard his hue and cry and came for his rescue and tried to apprehend the detenu and his associates. On noticing the same, the detenu and his associates pushed the mobile cart down and spoiled the same and threatened the public at the point of knife. The detenu and his associates picked up soda water bottles and jelly stones and hurled them against the public. Taking advantage of the panic situation, the detenu and his associates escaped from the spot. Based on the complaint given by the complainant, a case was registered, taken up for investigation and the detenu was apprehended.

3.2. That apart, the detaining authority also took note of one adverse case pending against the detenu in Crime No.346 of 2007 for the offences punishable under Sections 147, 148 and 302 IPC.

3.3. Considering these activities of the detenu are prejudicial to maintenance of public order, the detaining authority passed the impugned order of detention.

4. We heard the submissions of both sides and perused the entire materials available on record.

5. The only contention of the learned counsel for the petitioner is that in the English version of the grounds of detention only one adverse case has been referred to and taken note of by the detaining authority while passing the detention order, but in the translated vernacular version of the grounds of detention two adverse cases have

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been referred to and relied on by the detaining authority while passing the detention order, and this contradiction only shows the non-application of the mind on the party of the detaining authority.

6. A perusal of the English version of the grounds of detention dated 11.7.2007 discloses that the detaining authority has taken adverse notice of only one case, viz., Crime No.346 of 2007 for the offences punishable under Sections 147, 148 and 302 IPC. Whereas, in the vernacular version of the grounds of detention furnished to the detenu, a reference has been made to two adverse cases, viz., Crime No.346 of 2007, referred to above, and another Crime No.714 of 2006, which was not referred to in the English version of the grounds of detention. Thus, the discrepancy between the English version and vernacular version of translated grounds of detention furnished to the detenu to enable him to file an effective representation is apparent. This discrepancy reflects the total non application of mind on the part of the detaining authority and also deprives the detenu of a just and valid opportunity to submit an effective representation.

For the reason aforesaid, the impugned order of detention is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The order of detention dated 11.7.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required connection with in any other crime. No costs.

sasi

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:

1. THE SECRETARY TO GOVERNMENT
PROHIBITION AND EXCISE DEPARTMENT,
FORT ST.GEORGE, CHENNAI-9.

2. THE COMMISSIONER OF POLICE
GREATER CHENNAI, EGMORE, CHENNAI-8.

3. THE PUBLIC PROSECUTOR,
HIGH COURT, CHENNAI.

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4. THE SUPERINTENDENT,
CENTRAL PRISON, CHENNAI.

5. THE JOINT SECRETARY TO GOVT
PUBLIC LAW & ORDER DEPARTMENT,
FORT ST GEORGE, CHENNAI -09.
MDR (co)
sg 03/01/08

H.C.P.No.1395 of 2007
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